

Memorandum

To : Mr. Stephen R. Rudd, Administrator
Environmental Fees Division - MIC: 57

Date: June 30, 1998

From : Janet Vining
Legal Division

Subject:

On June 16, 1992, we wrote a memorandum to Robert Frank concerning the application of the hazardous waste fees to the cleanup of a concrete wash pad and collection pond at the [redacted]. Based on several subsequent opinions issued by the Legal Division concerning the application of relevant sections of the Health and Safety Code, as well as recent discussion concerning the draft regulation on generator fees, it is appropriate to revisit the application of the fees to the Airport cleanup. For the reasons set forth below, we now conclude that the [redacted] is not liable for the hazardous waste fees for the cleanup of the concrete wash pad and collection pond at the [redacted].

Subdivision (a)(1) of Health and Safety Code Section 25174.7 states that the land disposal fee and generator fee do not apply to hazardous wastes "which result when a government agency, or its contractor, removes or remedies a release of hazardous waste in the state caused by another person". During the time when the Airport manifested the waste, Health and Safety Code Section 25345.3 provided an exemption from the Superfund tax for any person who "removes or remedies a release, by another person, of hazardous waste".

In our earlier memorandum, we concluded that the [redacted] could not take advantage of the exemptions in Sections 25174.7 and 25345.3 because the [redacted] owned and operated the [redacted] and therefore did not remove a release of hazardous waste caused by another person, even though the contamination resulted from cropdusters using a wash pad at the Airport to rinse out tanks that contained pesticide solutions.

In recent years, the Legal Division has had the opportunity to review other situations in which a local or state government offers a service to the public as part of its governmental function, and contamination occurs as a result of the public using that service. For example, we concluded that the hazardous waste fees did not apply to hazardous waste

generated during the cleanup of a city sewer system into which a company had discharged lead-contaminated waste. Furthermore, we included the following language in the recently-drafted generator fee regulation:

...the government agency is not subject to the fee if the release of hazardous waste is caused by the public during public use of services provided by the government agency as part of its governmental activities, such as the providing of sewer service or roads used by the public.

The operated an airport for the use of the public, and, as part of that service, provided a concrete wash pad for the convenience of members of the public that used the airport. It was these members of the public, rather than the that caused a release of hazardous waste when they rinsed their airplanes and pesticide tanks. There is no evidence that the contributed to the contamination by washing its own planes at the wash pad.

We therefore conclude that, pursuant to Revenue and Taxation Code Sections 25174.7(a)(1) and 25345.3, the County is not liable for the hazardous waste land disposal fee, generator fee, or Superfund tax concerning the hazardous waste generated during the cleanup of the concrete wash pad and collection pond at the Airport.

Janet Vining

JV:lm

cc: Mr. David McKillip
Ms. Mary Armstrong
Ms. Judy Nelson
Mr. Dennis Mahoney, Dept. of Toxic Substances Control

Jose, Arcadio

From: Vining, Janet
To: Jose, Arcadio
Subject: Hazardous Waste Annotations
Date: Wednesday, August 12, 1998 2:15PM

I recently forwarded to you a June 30, 1998 memorandum concerning the () Airport in V () s to annotate. The annotation of this memo should replace the current annotation under "Hazarodus Substances - Exemptions - Government Agency - County Airport Cleanup", which is now obsolete. Thanks.